

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

STEVEN GEORGE FAIR,

07-CV-1681-HU

OPINION AND ORDER

Plaintiff,

v.

SPORTSMANS WAREHOUSE,  
STEPHEN C. LEBANC, STUART  
UTGAARD, PRAIRIE WEST STUDIO,  
ANGLER ART, JOHN DOE 1-999,

Defendants.

STEVEN GEORGE FAIR  
c/o Post Master General  
Sandy General Delivery  
Sandy, OR 97055

Plaintiff, *Pro Se*

CHRISTOPHER R. SULLIVAN  
Lindquist & Vennum P.L.L.P.  
4200 IDS Center  
80 South Eight Street  
Minneapolis, MN 55402  
(612) 371-6226

**RONALD TRACY ADAMS**

Black Helterline, LLP  
1900 Fox Tower  
805 S.W. Broadway  
Portland, OR 97205-3359  
(503) 417-2132

Attorneys for Defendants Sportsmans Warehouse,  
Prairie West Studio, Angler Art, and Stuart  
Utgaard

**PETER A GERGELY**

Merchant & Gould  
1050 Seventeenth Street  
Suite 1950  
Denver, CO 80265  
(303) 357-1670

**JAMES LEE GUSE**

Parsons Farnell & Grein, LLP  
805 S.W. Broadway  
Suite 1560  
Portland, OR 97205  
(503) 222-1812

Attorneys for Defendant Stephen C. LeBlanc

**BROWN, Judge.**

On April 4, 2008, Magistrate Judge Dennis James Hubel issued Findings and Recommendation in which he recommended the Court grant the Motion to Dismiss of Defendants Stuart Utgaard and Sportsmans Warehouse joined by Defendant Stephen LeBlanc pursuant to the first-to-file rule on the ground that Plaintiff had previously filed a complaint involving the same parties and issues in the United States District Court for the District of Colorado. This Court did not find any error in the Magistrate Judge's Findings and Recommendation. The Court, therefore,

adopted the Findings and Recommendation, granted the Defendants' Motion to Dismiss, and dismissed this matter with prejudice.

On August 27, 2008, Plaintiff filed a Motion (#45) to Reopen Case and Reinstate State Claim seeking to reinstate his state law claim for defamation on the grounds that the District of Colorado dismissed Defendant LeBlanc's cross-claim for defamation without prejudice and Plaintiff was "denied due process of Law in the district of Colorado because of ethnicity, deeply held political beliefs, and deeply held religious beliefs."

#### DISCUSSION

Federal Rule of Civil Procedure 60(b) provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence could not have been discovered in time to move for a new trial . . . (3) fraud . . . , misrepresentation, or other misconduct of an adverse party; . . . or (6) any other reason justifying relief from the operation of the judgment.

Whether to grant or to deny a motion under Fed. R. Civ. P. 60(b) is within the district court's discretion. *Community Dental Serv. v. Tani*, 282 F.3d 1164, 1167 n.7 (9<sup>th</sup> Cir. 2002).

Plaintiff does not allege and the record does not reflect

evidence of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud or misconduct of an adverse party in the proceedings. In addition, to the extent Plaintiff intends to allege the Colorado court discriminated against him, the Court notes it is well settled that judges are absolutely immune from liability for judicial acts performed in their judicial capacity. *Mireles v. Waco*, 502 U.S. 9, 12 (1991). See also *Forrester v. White*, 484 U.S. 219, 225-26 (1987); *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978). "A judge is not deprived of immunity because he takes actions which are in error, are done maliciously, or are in excess of his authority." *Meek v. County of Riverside*, 183 F.3d 962, 966 (9<sup>th</sup> Cir. 1999)(citing *Stump v. Sparkman*, 435 U.S. 349, 355-56 (1978)).

The Court, therefore, concludes Plaintiff has not provided an adequate basis to set aside the Judgment in this matter. Accordingly, the Court, in the exercise of its discretion, denies Plaintiff's Motion to Reopen Case and Reinstate State Claim.

#### **CONCLUSION**

The Court **DENIES** Plaintiff's Motion (#45) to Reopen Case and Reinstate State Claim and declines to set aside the Judgment in

this matter.

IT IS SO ORDERED.

DATED this 23<sup>rd</sup> day of September, 2008.

/s/ Anna J. Brown

---

ANNA J. BROWN  
United States District Judge